

16-90078-jm
December 22, 2016
Chief Judge

**JUDICIAL COUNCIL OF THE
SECOND CIRCUIT**

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In re
CHARGE OF JUDICIAL MISCONDUCT

Docket No. 16-90078-jm

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ROBERT A. KATZMANN, *Chief Judge*:

On July 21, 2016, the Complainant filed a complaint with the Clerk's Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 (the "Act"), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, 249 F.R.D. 662 (U.S. Jud. Conf. 2008) (the "Rules"), charging a district judge of this Circuit (the "Judge") with misconduct.

BACKGROUND

The Complainant was convicted in 2004 of narcotics conspiracy. In 2005, the court of appeals remanded for resentencing. The Judge resentenced the Complainant in 2012. The court of appeals affirmed, concluding that the Complainant was not denied due process by the delay in resentencing, which was

attributable, in part, to defense requests for continuances.

In January 2015, the Complainant filed a federal habeas motion; the Judge granted the Government's request for an extension until April 2015 to respond to the motion. In May 2015, the Complainant moved for discovery and for an extension of time to reply to the Government's response. The Judge did not rule on the Complainant's motion and, in July 2016, the Complainant sought the Judge's recusal, alleging that she was prejudiced against him. As evidence of prejudice, the motion to recuse asserted that the Judge had denied or refused to consider the Complainant's sentencing arguments, delayed resentencing him, denied his October 2015 motion for a sentence reduction, and failed to rule on his discovery and extension request for over a year.

The misconduct complaint similarly alleges that the Judge is prejudiced and biased against the Complainant, as demonstrated by her adverse rulings and her "deliberate dilatory inactions." The complaint asserts that the Judge has failed to rule on his request for discovery and an extension for over a year, thus denying him access to federal habeas relief and his right to due process. The complaint concludes that "every single day that [the Judge] continues to improperly and deliberately delay proceeding in [the Complainant's] case is a

rebuke against [him]” and “another irretrievable day of [his] liberty.”

In August 2016, after the filing of the misconduct complaint, the Judge directed the Government to respond to the Complainant’s request for discovery and denied his request for recusal. The Complainant’s habeas motion remains pending in the district court.

DISCUSSION

The complaint is dismissed.

The gravamen of the complaint concerns the Judge’s delay in ruling on the Complainant’s request for discovery and an extension of time in his federal habeas proceeding. However, the rules and guidance implementing the Act make clear that an allegation of delay is ordinarily not the proper subject of a judicial misconduct complaint and should therefore be dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C.

§ 352(b)(1)(A)(ii); Rule 3(h)(3)(B) (excluding from cognizable misconduct “an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision or habitual delay in a significant number of unrelated cases”); Rule 3 cmt. (“[A] complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to

challenge the correctness of an official action of the judge—in other words, assigning a low priority to deciding the particular case.”).

The complaint could be read to allege an improper motive for the delay—i.e., that the Judge is prejudiced and biased against the Complainant. But this allegation is speculative and wholly unsupported, and is therefore dismissed as “lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); Rule 11(c)(1)(D). A decision for or against a party does not evidence bias. Nor do several such decisions. The Complainant’s bald allegations of illicit or improper motives do not suffice.

The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.